case reads: "This act applies * * * to transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment." The rule always quoted by the courts in cases involving the question was first stated in *Coe* v. *Errol,* 116 U. S. 517, 29 L. Ed. 715, "that goods are in interstate or foreign commerce when they have actually started in the course of transportation to another state, or delivered to a carrier for transportation in a continuous route of journey." It is evident this rule is of little aid, for the question is generally, as in the present case, whether the goods have been delivered for transportation in a continuous route of journey. In the principal case, it seems that the fact that the consignee intended to export the lumber was the determining factor, and yet the courts deny that the intention, either of the shipper or of the consignee, can change the character of the shipment, the Supreme Court saying in *G. C. & S. F. R. R. Co.* v. *Texas, supra*: "In many cases it would work the grossest injustice to the carrier if it could not rely on the contract of the shipment it had made, know whether it was bound to obey the state or the federal law, or, obeying the former, find itself mulcted in damages for not obeying the law of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract." On the other hand it is well settled that the bill of lading in itself does not govern. As where goods are billed to a point in the same state to be delivered to a carrier to be shipped out, they are in interstate commerce throughout. *Houston Direct Navigation Co.* v. *Insurance Co.,* 89 Tex. 1, 30 L. R. A. 713. Likewise when billed to an agent to be re-shipped out of the state. *Cutting* v. *Florida Ry. and Nav. Co.,* 46 Fed. 641, or where the shipper bills to one point, intending himself to forward to another point. *Porter* v. *St. L. S. W. Ry. Co.,* 78 Ark. 182. While the Supreme Court in the principal case stated the above rule to be well settled, it used the following illustration in *G. C. & S. F. R.* v. *State, supra.*. "Suppose a car load of goods were shipped from Texarkana to Goldthwaite under a bill of lading calling for that transporation only, and supposing that the laws of Texas required, subject to a penalty, that such goods should be carried in a particular kind of a car—can there be any doubt that the carrier would be subject to the penalty, even though it should appear that the shipper intended after the goods had reached Texarkana to forward them to some place outside the state?" The statement in *Houston Direct Nav. Co.* v. *Insurance Co., supra,* that "no direct and certain definition of Interstate Commerce has yet been fixed by the decisions of the courts and perhaps none can be found which will apply to all cases," seems quite true. And this can be said without considering those cases involving the right of a state to tax, in which the courts seem to take a still different view of when goods are in interstate commerce.

R. L. M.

THE EVASION OF LIMITATIONS ON MUNICIPAL INDEBTEDNESS.—The very generally adopted limitations on the amount of indebtedness lawfully to be contracted by a municipal corporation often run contrary to the desires and needs of such corporations, and the attempts to accomplish by indirection the forbidden result have led to many interesting decisions. In a recent case

(*Feil* v. *City of Coeur d'Alene*, 129 Pac. 543) the Supreme Court of Idaho held that the constitutional limitation of indebtedness could not be evaded by the following subterfuge. The common council passed an ordinance for the purchase of a waterworks system, specifying that the city generally should not be liable for such purchase: bonds were authorized, payment for which was expressly declared therein to come solely from a special fund created out of the net income of the purchased works; and the city covenanted to maintain proper rates to pay principal and interest at maturity and not to encumber or sell the property until full payment was made. The Idaho constitution provides that "no city, etc., shall incur any *indebtedness or liability* in any manner or for any purpose exceeding in that year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors thereof "nor unless at the time of incurring *such indebtedness* provisions shall be made for the collection of an annual tax," etc. The city was already indebted up to the constitutional limit, but no vote was had nor provision for annual tax made. The Supreme Court held that the proposed plan was in conflict with the provision of the constitution, and action on the ordinance was enjoined.

There are many courts that have tried to avoid the manifest intent of such provisions in order to meet the exigencies and encourage the growth of cities and towns. This is well illustrated by the case of *Swanson* v. *City of Ottumwa*, 118 Ia. 161, 59 L. R. A. 620, where the state court refused to enjoin the issuance of bonds, on the ground that by the present levy of an annual two-mill tax until the waterworks were paid for, the returns from the levy were so anticipated as to be considered cash in the city treasury, though the levy would extend over a period of twenty years or more. The effect of such holding was nullified by *Ottumwa* v. *City Water Supply Co.*, 119 Fed. 315, 59 L. R. A. 604, when the Circuit Court of Appeals declared this procedure a mere evasion and granted an injunction.

While differences in the wording of constitutional provisions may have frequently led to opposite results, conflicting decisions on what constitutes municipal indebtedness have been laid down. It is now generally held that contracts for supplies for a term of years calling for annual supply with payment each year for the amount furnished therein do not fall under the constitutional prohibition. *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1; *Lamar Water & Supply Co.* v. *Lamar*, 128 Mo. 188, 26 S. W. 1025, 32 L. R. A. 157; *City of Joseph* v. *Joseph Water Works*, 57 Ore. 586, 111 Pac. 864, 112 Pac. 1083. But these contracts are considered inseverable and as constituting an indebtedness for the aggregate amount in many jurisdictions. *Prince* v. *Quincy*, 105 Ill. 138, 44 Am. Rep. 785; *Beard* v. *Hopkinsville*, 95 Ky. 239, 23 L. R. A. 402; *Evans* v. *Holman*, 244 Ill. 596, 91 N. E. 723.

As these restrictions interfere with the freedom of contract, it is the policy of courts to give them a strict construction. It is an established rule that contracts for local improvements which are payable entirely out of special assessments upon particular property or districts are not affected by these limitations. *Quill* v. *City of Indianapolis*, 124 Ind. 292, 7 L. R. A. 681; *McGilvery* v. *City of Lewiston*, 13 Idaho, 338, 90 Pac. 348. But even in this case

if the bonds for such improvements are so drawn that the city itself is liable thereunder, the constitutional provision is violated if the amount exceeds the debt limit. *Burlington Sav. Bank* v. *City of Clinton,* 111 Fed. 439.

The payment of municipal contracts need not directly fall upon funds to be raised by general taxation to come within the meaning of "municipal indebtedness." A portion of the city's property, previously owned by it, may not be set aside by way of hypothecation or mortgage, as a special fund for the payment of an obligation, though the city's general credit is not affected. *Mayor of Baltimore* v. *Gill,* 31 Md. 375; *City of Joliet* v. *Alexander,* 194 Ill. 457, 62 N. E. 861. But the principle is generally adhered to that, if payment is to come entirely out of a special fund arising from the revenue of the acquired property and the general revenue or previously owned property of the city is not to be applied in satisfaction of the debt, no municipal indebtedness is created and the constitutional provision does not apply. *Winston* v. *City of Spokane,* 12 Wash. 524; *Brockenbrough* v. *Board of Water Com.,* 134 N. C. 1; *Connor* v. *City of Marshfield,* 128 Wis. 280; *State* v. *City of Neosho,* 203 Mo. 40; *Evans* v. *Holman,* 244 Ill. 596.

To the foregoing doctrine the principal case is opposed unless the decision can be grounded upon a greater breadth in the terms of the constitutional provision to be construed, or unless the covenants of the city to maintain the rates constitute an indebtedness against it. Though the majority opinion seemingly disapproves of the rule of the cases cited above, their determination is based upon the ground that the insertion of the word "liability" after "indebtedness" extends the application of the prohibition to the covenants of the city to maintain the rates. But the North Carolina provision reads, "No city * * * shall contract any debt, pledge its faith, or loan its credit;" this would seem to be as stringent a clause as that considered here. Furthermore indebtedness and liability coupled together in this connection appear to have the same meaning, and this conclusion is strengthened by the fact that the word "indebtedness" is alone used later in the clause. As said by STEWART, C. J., in his dissenting opinion to the principal case, "These cases in my judgment were dealing with constitutional provisions identical in meaning with the constitution of this state." The strict construction of these provisions tends to prevent "liability" being taken in its broad sense, just as it has limited "indebtedness" to its narrower meaning.

If "liability" is used with no greater signification than "indebtedness" there is little doubt that the covenants of the city do not fall within the provision. Many of the cases cited above had such a contract obligation on the part of the city. Construing the Missouri limitation, BURGESS, J., in *Saleno* v. *Neosho,* 127 Mo. 627 (approved in *State* v. *Neosho,* 203 Mo. 75) said "A debt is understood to be an unconditional promise to pay a fixed sum at some specified time." The obligation of the municipality here is not to be responsible for payment but to do something which it could be compelled to perform even without such covenant.

The principal case must therefore be based upon a nice statutory construction or be taken as contrary to all previously decided cases upon this point.

C. A. W.